

SHELL WESTERN EXPLORATION AND PRODUCTION, INC.

IBLA 87-128

Decided March 24, 1987

Appeal from a decision of the Director, Minerals Management Service, affirming a decision of the Acting Regional Supervisor, Alaska Outer Continental Shelf Region, denying a Shell Western Exploration and Production, Inc., request that certain geological data and information pertaining to wells on leases OCS-Y 0180 and OCS-Y 0181 remain confidential for an extended period of time.

Affirmed.

1. Confidential Information -- Oil and Gas Leases: Generally -- Outer Continental Shelf Lands Act: Generally

If the terms of a Federal-State cooperative agreement entered into pursuant to 43 U.S.C. § 1352 (1982), provide that an oil and gas lease issued by the Federal Government is to be issued and administered pursuant to Federal laws, Federal laws and regulations pertaining to release of confidential information will apply. If a decision to release such information comports with Federal law the release of the information is not a breach of discretionary authority.

APPEARANCES: William G. Riddoch, Esq., Houston, Texas, for Shell Western Exploration and Production, Inc.; Cass C. Butler, Esq., and L. Poe Leggette, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Shell Western Exploration and Production, Inc. (Shell), has from an August 12, 1986, decision of the Director, Minerals Management Service (MMS), affirming a March 5, 1986, decision issued by the Acting Regional Supervisor, Alaska Outer Continental Shelf (OCS) Region rejecting Shell's October 22, 1985, request that MMS extend the period of confidentiality for geologic data and information submitted by Shell pertaining to the OCS-Y 0180 No. 1 and OCS-Y 0181 No. 1 wells drilled by Shell as operator for Federal oil and gas leases OCS-Y 0180 and OCS-Y 0181, which had been issued pursuant to 43 U.S.C. § 1337 (1982).

This case involves the application of 30 CFR 250.3. Reference to this regulation is made throughout this decision and it is therefore appropriate to set forth this regulation in full at the outset. 30 CFR 250.3 provides:

§ 250.3 Data and information to be made available to the public.

(a) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geophysical data, processed geophysical information, and interpreted geological and geophysical information, submitted pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect, or for a period of 10 years after the date of submission, whichever is less unless the Director determines that earlier release of such information is necessary for the proper development of the field or area.

(b) Except as provided in paragraph (c) of this section or in § 252.7 of this chapter, geological data and analyzed geological information, submitted pursuant to the requirements of this part, shall not be available for public inspection without the consent of the lessee as long as the lease remains in effect or for a period of 2 years after the date of submission, whichever is less unless the Director determines that earlier release of such information is necessary for the proper development of the field or area.

(c) Geophysical data, processed geophysical information and interpreted geophysical information collected on a lease with high resolution systems (including, but not limited to, bathymetry, side-scan sonar, subbottom profiler and magnetometer) in compliance with stipulations or orders concerning protection of environmental aspects of the lease may be made available to the public 60 days after submittal to the Director. However, unless the lessee can demonstrate to the satisfaction of the Director that release of the information or data would unduly damage the lessee's competitive position, the Director may release the information and data at an earlier time if the Director determines it is needed by affected States to make determinations under § 250.34 of this part.

On October 22, 1985, Shell requested an extension of the period of confidential treatment for certain geological data and information which had previously been submitted by it. As a basis for its request, Shell noted the two Federal leases were adjacent to two leases issued by the State of Alaska, the Federal and State leases were subject to a cooperative agreement between the United States and Alaska, entered into pursuant to 43 U.S.C. § 1336 (1982), and the State of Alaska had agreed to hold the well data and information confidential beyond the 2-year period. The four wells had been directionally drilled from a single manmade island.

Shell stated that both "the state and federal leases cover the same geological prospect. Thus the data from the four wells * * * reveal information attributable to the same geological prospect," and that "it would be inconsistent" if the data were "held confidential by the state, but * * * released by the MMS" (Oct. 22, 1985 letter at 1). Shell opined that "release

of data would frustrate the purpose of the cooperative agreement" between MMS and Alaska (cooperative agreement).

Shell also contended that geological data and information were specifically excluded from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(9) (1982)), and that this exclusion gave MMS the discretionary authority to determine whether the information should be released to the public.

In its March 5, 1986, decision the Alaska OCS Regional Office, MMS, held the geological data and analyzed geological information to be subject to release 2 years after the date of submission, pursuant to 30 CFR 250.3(b), but noted that geophysical data, processed geophysical information, and interpreted geological and geophysical information would be retained for the longer period provided for in 30 CFR 250.3(a).

The March 5, 1986, decision also held that, although the leases were subject to the cooperative agreement, the cooperative agreement did not modify or supersede Federal regulations pertaining to the release of information submitted by a lessee and previously held confidential.

Shell then appealed from the Alaska OCS Region decision pursuant to 30 CFR 290, which provides for appeal to the Director, MMS. In its April 3, 1986, appeal, Shell set forth four reasons for appeal which are summarized as follows:

1. The MMS decision will adversely affect Shell and its partners by negating a competitive edge gained as a result of their expenditures of time and capital.
2. The MMS decision is inconsistent with the intent of the cooperative agreement. The State of Alaska, by letter dated January 13, 1986, had extended the term of confidential treatment for the two wells drilled in State leases, consistent with AS 31.05.035(c). The cooperative agreement provides for coordination of leasing activities, and release of the information regarding the Federal wells would frustrate the State's decision.
3. MMS has acknowledged that some categories of data and information should remain confidential for an additional period of time. Referring to a proposed regulation printed at 48 FR 30147 (June 30, 1983), Shell stated that much of the information MMS proposes to release would be protected if the regulation were adopted.
4. MMS has discretionary authority to extend the period of time for a document to be kept confidential. Shell urged the Director, MMS, to coordinate the Federal and State leasing activities pursuant to the cooperative agreement by keeping the information confidential for a period of time equal to that granted by the State of Alaska.

On August 12, 1986, the Director, MMS, issued a decision affirming the determination by the Alaska OCS Region that the geological data and information for wells on leases OCS-Y 0180 and OCS-Y 0181 should be released 2 years after the date of submission pursuant to 30 CFR 250.3(b). In the decision

the Director stated Department policy that data be released to the public to the greatest extent feasible, citing 43 CFR 2.13(a) as a basis for his finding. He noted that this policy is reflective of the intent of section 26(c) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1352 (1982).

The Director, MMS, also found the release of information would not violate the terms of the cooperative agreement. He noted that Article V of the cooperative agreement provided that the Federal leasing laws would be applicable to Federal leases, concluding the cooperative agreement could not be used to make State leasing laws applicable to Federal leases. In answer to the FOIA argument raised by Shell, the Director found 43 U.S.C. § 1352 (1982), met the requirements of 5 U.S.C. § 552, in light of the Secretarial exercise of authority when adopting the regulation found at 30 CFR 250.3.

Shell has now appealed to this Board from the August 12, 1986, decision. On appeal Shell does not dispute the MMS authority to release well data 2 years after the data is submitted to MMS by a lessee, but urges this Board to find the decision to release the information a breach of discretionary authority.

Counsel for MMS filed an answer and request for expedited consideration. ^{1/} In the answer, counsel cited a decision by the U.S. District Court for the Central District of California in Mobil Oil Corp. v. Watt, No. CV 83-5785-Kn (JRx), issued on October 12, 1983, as a basis for the conclusion that the MMS action to release the geologic data and information was consistent with legislative intent, was within the scope of the Secretary's discretionary authority and was not an abuse of that discretion.

[1] Although the recitation of the background leading to appeal is somewhat lengthy, the issues presented are not complex. As Shell noted in its statement of reasons, it "does not dispute the authority of the MMS to release well data to the public two years after such data has been provided to MMS by the lessee" (Statement of Reasons at 4). Shell does not contend that the well data at issue falls within the provisions of 30 CFR 250.3(a), rather than 30 CFR 250.3(b), or that it falls within any exception to 30 CFR 250.3(b). It merely argues that MMS is obligated by the cooperative agreement to coordinate its decision to release the well data with the State of Alaska, and that since the State of Alaska has agreed not to release the data, MMS must coordinate the dates it releases the data with the release dates agreed to by the State of Alaska. ^{2/}

^{1/} The request did not state whether appellant agreed with or opposed the request. When, after a reasonable period of time, Shell did not oppose the request, the case was given expedited status. The request is hereby granted.

^{2/} By applying the logic advanced by Shell, an equally compelling argument could be made for the proposition that the State's agreement to retain its well data and information on a confidential basis was a violation of the cooperative agreement, as that determination would be contrary to the Federal regulations. An equally plausible argument could be made for release of the well data and information submitted to the State.

Our reading of the cooperative agreement leads to a conclusion other than that urged by Shell. The purpose of the cooperative agreement was to allow both the Federal and State Governments to issue leases covering the seabed and subsoil of certain submerged lands in the Beaufort Sea claimed by both. The parties agreed that it was in the best interest of each to have a mineral lease sale in the area of dispute at an early date, and the agreement was to provide for a safekeeping of revenues pending final determination of the dispute.

After defining the disputed area the parties agreed that leases issued in the disputed area would be issued in accordance with the cooperative agreement. The disputed area was divided into two blocks and leasing and management authority for the blocks were delegated to the respective parties. The cooperative agreement provided that in Zone A "[L]easing and management of the lands * * * shall be accomplished by the U.S. Department of the Interior in accordance with [the cooperative] agreement, and with the guidelines set out in Appendix B * * *" (Cooperative Agreement at V).

Appendix B provides that "Federal standards and legal requirements will apply to those leasing units * * * on disputed lands in Zone A as described in the [cooperative] agreement" (Appendix B at 2).

It is clear the Department and the State of Alaska intended to have the leases in the two areas defined in the cooperative agreement issued and administered pursuant to their respective laws. Shell does not dispute that, under Federal law, MMS has authority pursuant to the provisions at 30 CFR 250.3, to release data it submitted to MMS in compliance with the terms of a Federal oil and gas lease and underlying regulations.

Shell claims that irreparable harm will result from the release of the well data. In light of our holding regarding the effect of the cooperative agreement upon the discretionary authority of the Secretary of the Interior, our analysis of this argument is the same as that advanced in Mobil Oil Corp. v. Watt, *supra*. In that case the court concluded that the plaintiffs would not be "irreparably harmed" by the loss of any competitive advantage that is rightfully due them. They have equal access to the data submitted by their competitors. *Id.* at 16, 17.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

Kathryn A. Lynn
Administrative Judge
Alternate Member.

